

Exhibit 42

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF DELAWARE

3 ----- X
4 MAGTEN ASSET MANAGEMENT CORPORATION and
5 LAW DEBENTURE TRUST COMPANY OF NEW YORK,

6 Plaintiffs,

7 -vs-

8 NORTHWESTERN CORPORATION,

9 Defendant.

10 Civil Action No. C.A. No. 04-1494 (JJF)

11 ----- X
12 MAGTEN ASSET MANAGEMENT CORP.,

13 Plaintiff,

14 -vs-

15 MICHAEL J. HANSON and ERNIE J. KINDT,

16 Defendants.

17 Civil Action No. C.S. No. 05-499 (JJF)

18 ----- X

19 DATE: November 13, 2007

20 TIME: 9:00 a.m.

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23 Deposition of PAUL A. MARCUS, held at
24 the offices of Curtis, Mallet-Prevost, Colt &
25 Mosle, 101 Park Avenue, New York, New York,

<p style="text-align: right;">Page 14</p> <p>1 - PAUL A. MARCUS -</p> <p>2 Q. Mr. Marcus, I think you said you were 3 asked to assess certain misrepresentations and 4 omissions in Northwestern's financial statements 5 for the year 2002; is that correct?</p> <p>6 MR. KAPLAN: Objection.</p> <p>7 A. I don't believe I set a date. I believe 8 my characterization was that I was asked to assess 9 those misrepresentations and omissions and 10 determine the impact that those would have had on 11 the company's invested capital and its availability 12 of financing.</p> <p>13 Q. Who told you there were any omissions or 14 misrepresentations in any of Northwestern's 15 financial statements?</p> <p>16 A. Through reviewing documents, there were 17 restated financial statements which would have 18 omissions. There was a Securities and Exchange 19 Dissent Decree Order that I reviewed.</p> <p>20 There were documents pertaining to an 21 internal investigation that I reviewed, things of 22 that nature.</p> <p>23 Q. Do I take it, then, that you are 24 offering no independent opinion of your own in this 25 action as to whether or not there were any</p>	<p style="text-align: right;">Page 15</p> <p>1 - PAUL A. MARCUS -</p> <p>2 misstatements or omissions in any of Northwestern's 3 financial statements?</p> <p>4 MR. KAPLAN: Objection to form.</p> <p>5 A. I can tell you what my opinions are in 6 the matter, which are that, you know, as it's 7 clearly articulated in my report, that the 8 October 8th equity financing would not have 9 happened, that the transfer of assets -- that would 10 have been impeded by the involved security holders 11 and regulatory commission, that the transfer put 12 the holders of the QUIPS, who were part of the 13 Montana Power Company, at greater risk as being 14 part of the Northwestern company, those would have 15 been two of my opinions. The third being that 16 Clark Fork did not have the wherewithal to pay the 17 QUIPS back. Those are my three opinions.</p> <p>18 Q. Let me direct your attention, please, to 19 the penultimate paragraph on the first page of 20 Exhibit 1.</p> <p>21 Could you read that, please, into the 22 record?</p> <p>23 A. Which paragraph are you referring to?</p> <p>24 Q. The second to the last paragraph, the 25 last full paragraph, if you will, on Page 1.</p>
<p style="text-align: right;">Page 16</p> <p>1 - PAUL A. MARCUS -</p> <p>2 A. The one beginning, "We will not be 3 auditing"?</p> <p>4 Q. Yes.</p> <p>5 A. "We will not be auditing any financial 6 statements or performing test procedures with 7 respect to information in conjunction with this 8 engagement. Our services are not designed nor 9 should they be relied upon to disclose weaknesses 10 in internal controls, financial statement errors, 11 irregularities, illegal acts, or disclosure 12 deficiencies."</p> <p>13 Q. Mr. Marcus, let me ask you then, again: 14 Do I take it you are not offering any independent 15 opinion of your own in this action consistent with 16 the representation in the engagement letter as to 17 whether there were any omissions or misstatements 18 in any financial statements of Northwestern?</p> <p>19 MR. KAPLAN: Objection.</p> <p>20 A. Consistent with this paragraph, I have 21 not performed any attestation procedures that would 22 specifically relate to auditing financial 23 statements, if that answers your question.</p> <p>24 Q. Would you agree that nothing in your 25 opinion should be relied upon to disclose any</p>	<p style="text-align: right;">Page 17</p> <p>1 - PAUL A. MARCUS -</p> <p>2 disclosure deficiencies in any of Northwestern's 3 financial statements?</p> <p>4 MR. KAPLAN: Objection.</p> <p>5 A. I disagree with that.</p> <p>6 Q. You disagree.</p> <p>7 In what way does your opinion disclose 8 such disclosure deficiencies?</p> <p>9 A. As I mentioned earlier, my opinion is 10 based on review of significant information which 11 talks about the deficiencies within the financial 12 statements, within the public disclosures that were 13 made. And I gave you a list of sources that I -- I 14 used in my -- developing my understanding of those 15 deficiencies, so --</p> <p>16 MR. PIZZURRO: Mark this as 2. 17 (Whereupon, Marcus Exhibit 2 was marked 18 at this time.)</p> <p>19 Q. Mr. Marcus, you've just been handed a 20 document marked as Exhibit 2. 21 Do you recognize this as the second 22 amend -- strike that. 23 -- First Amended Complaint in this 24 action? 25 A. It looks familiar.</p>

<p style="text-align: right;">Page 18</p> <p>- PAUL A. MARCUS -</p> <p>Q. Did you review this document in connection with the opinion you gave in this matter?</p> <p>A. My recollection is, is that I read the document early in the process.</p> <p>Q. I'd like you to turn to Page 10 of the document. Look at Paragraph 51 if you would, sir.</p> <p>Paragraph 51 reads, "The Debtor was insolvent both immediately before and immediately after the acquisition of MPLLC and the assumption of related liabilities. The Debtor was engaged in a business with unreasonably small capitalization and incurred debts beyond its ability to pay both immediately before and immediately after the acquisition of MPLLC and the assumption of liabilities."</p> <p>Sir, do you understand that the Debtor in this paragraph is Northwestern Corporation?</p> <p>MR. KAPLAN: I think if we look -- if you look on the first page of the Complaint -- actually, I'm sorry, Paragraph 1 on Page 2, there it's defined.</p> <p>A. Yes, I do.</p> <p>Q. Did you ever discuss the allegations</p>	<p style="text-align: right;">Page 19</p> <p>- PAUL A. MARCUS -</p> <p>contained in this paragraph with anyone from Fried, Frank?</p> <p>A. Not to my recollection, no.</p> <p>Q. Did you ever discuss the allegations in this paragraph with anybody else at Huron?</p> <p>A. Not to my recollection, no.</p> <p>Q. Were you ever asked or did you ever understand that you were being asked to offer any opinions with respect to the allegations contained in Paragraph 51?</p> <p>MR. KAPLAN: Objection to the form.</p> <p>A. I was never asked to perform any form of insolvency analysis.</p> <p>MR. PIZZURRO: Mark this as Exhibit 3. (Whereupon, Marcus Exhibit 3 was marked at this time.)</p> <p>Q. Mr. Marcus, you've just been handed a document which is marked as Exhibit 3. Do you recognize this as your report submitted in connection with this matter?</p> <p>A. Generally I recognize it. And I'll assume all of the pages were appropriately copied, and it is my report, yes.</p> <p>Q. In connection with issuing this report,</p>
<p style="text-align: right;">Page 20</p> <p>- PAUL A. MARCUS -</p> <p>did you ever speak to Mr. Robert Berliner?</p> <p>A. I did not, no.</p> <p>Q. Did you ever review any opinions prepared by Mr. Berliner?</p> <p>A. I did.</p> <p>MR. PIZZURRO: Mark this as Exhibit 4. (Whereupon, Marcus Exhibit 4 was marked at this time.)</p> <p>MR. KAPLAN: Just so the record is clear, there was an errata sheet which was also circulated with respect to the report.</p> <p>MR. PIZZURRO: It should be attached as the last page; if you'd like us to do that.</p> <p>MR. KAPLAN: No, that's all right. I wanted to make sure the record is clear.</p> <p>Q. Mr. Marcus, do you recognize Exhibit 4? I'm sorry. Let me strike that.</p> <p>You have been handed a document which is marked as Exhibit 4.</p> <p>Does that document contain the opinions of Mr. Berliner to which you referred earlier?</p> <p>A. I believe it does.</p> <p>Q. Is there any other document prepared by or on behalf of Mr. Berliner that you reviewed in</p>	<p style="text-align: right;">Page 21</p> <p>- PAUL A. MARCUS -</p> <p>connection with your opinion?</p> <p>A. Are you asking me if I recognize this document? I've seen one document from Mr. Berliner, I believe I submitted to you in the documents that I produced.</p> <p>It was the only one I produced. I don't know anything more than that.</p> <p>Q. Did you speak to any colleagues of Mr. Berliner before you prepared your report or finalized your report?</p> <p>A. I did not, no.</p> <p>Q. Do you know if any colleagues of yours at Huron spoke to Mr. Berliner prior to the preparation of your report?</p> <p>A. I believe they did.</p> <p>Q. Who was that?</p> <p>A. I believe it would have been Dana Hayes.</p> <p>Q. Does Ms. Hayes report to you on her conversations with Mr. Berliner?</p> <p>A. She would have given me a quick summary of her conversations.</p> <p>Q. What do you recall her telling you of her conversation with Mr. Berliner?</p> <p>A. Not a lot. I think she probably would</p>

<p>1 - PAUL A. MARCUS - 2 issue that became obvious, that, I guess, in 3 conversations with counsel there was a discussion 4 about it and I was asked the question, and I 5 included it as part of my opinions.</p> <p>6 Q. Give us the best recollection you have 7 of your discussions with counsel about this 8 opinion.</p> <p>9 A. My best recollections are that I was 10 asked whether or not they were better off or not, 11 depending where the assets were. And I said I 12 would analyze that and that's part of my opinion. 13 I guess I don't recall exactly how it became part 14 of the opinion.</p> <p>15 Q. Do you recall in any of your discussions 16 with counsel obtaining an understanding as to why 17 it is relevant in this lawsuit as to whether the 18 QUIPS holders were better off as creditors of 19 Northwestern Energy LLC or Northwestern?</p> <p>20 MR. KAPLAN: Objection to the form. 21 A. I don't recall a specific understanding of that, no.</p> <p>23 Q. Do you recall whether in any of those 24 discussions it was stated that the injury to the 25 QUIPS holders resulted from the conclusions that</p>	<p>Page 134</p> <p>1 - PAUL A. MARCUS - 2 you've drawn in II? 3 MR. KAPLAN: Objection to the form. 4 A. I don't recall having a discussion like 5 that.</p> <p>6 Q. Do you have an opinion as to whether or 7 not the injury to QUIPS holders is the result of 8 the circumstances you're opining on in this 9 Paragraph II?</p> <p>10 MR. KAPLAN: Objection to form. 11 A. Again, the Paragraph II is exactly what 12 it says. It's my opinion that the QUIPS holders as 13 a junior security were better off before the asset 14 transfer than after, essentially.</p> <p>15 Q. Do you have an opinion as to how the 16 QUIPS holders were injured in this case?</p> <p>17 Strike that.</p> <p>18 Do you have an opinion as to how the 19 QUIPS holders were damaged in this case? I'm not 20 asking you to quantify anything, just how they were 21 damaged.</p> <p>22 A. I've only analyzed this case and come up 23 with the opinions that I have in my report. I 24 haven't come up with a separate set of conclusions; 25 the one you asked being something I haven't come up</p>
<p>1 - PAUL A. MARCUS - 2 with.</p> <p>3 Q. It's not something that you considered?</p> <p>4 A. When you say "considered," it's nothing 5 that affects my report in any way.</p> <p>6 Q. That's not what I'm asking. I think if 7 you remember some of the questions and answers this 8 morning, I was asking you if the only opinions you 9 had formed were in your report.</p> <p>10 One of your answers was, "Well, I don't 11 know. You might ask me a question. I might have 12 an opinion."</p> <p>13 So I'm asking you now.</p> <p>14 MR. KAPLAN: Objection.</p> <p>15 A. As I sit here, I don't have an opinion to that.</p> <p>17 MS. BEATTY: Mr. Marcus, could you speak up?</p> <p>19 THE WITNESS: I'm trying. My throat is very sore.</p> <p>21 MS. BEATTY: We can't hear you at all down here. I'm lip reading and getting every other word.</p> <p>24 THE WITNESS: I'll keep drinking water.</p> <p>MS. BEATTY: Thank you.</p>	<p>Page 136</p> <p>1 - PAUL A. MARCUS -</p> <p>2 Q. Directing your attention, again, to 3 Page 7 III on that page, above the "Background," 4 your third opinion, where it says, "Assuming Clark 5 Fork remained liable for the QUIPS obligations, 6 Clark Fork would not have had the financial ability 7 to meet those obligations."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Sir, that is assuming, in addition, that the assets had been transferred out of Clark Fork as well as -- and that Clark Fork remained liable, correct?</p> <p>14 A. That's correct.</p> <p>15 MR. PIZZURRO: Let's mark this Exhibit 6.</p> <p>17 (Whereupon, Marcus Exhibit 6 was marked at this time.)</p> <p>19 Q. Mr. Marcus, I show you what's been marked as Exhibit 6, which bears the caption in these consolidated cases and is entitled "Expert Report of Christopher J. Kearns."</p> <p>23 Have you seen this document before?</p> <p>24 A. I was sent a copy of his report. I assume this is the same one.</p>

<p style="text-align: right;">Page 138</p> <p>1 - PAUL A. MARCUS -</p> <p>2 Q. Did you review it?</p> <p>3 A. Briefly skimmed through it.</p> <p>4 Q. When did you briefly skim through it?</p> <p>5 A. Very shortly after I received it, which</p> <p>6 would have been very shortly after it was</p> <p>7 submitted, but I don't remember the exact date.</p> <p>8 Q. Did you review it in preparation for</p> <p>9 your deposition today?</p> <p>10 A. I did not, no.</p> <p>11 Q. Let me direct your attention to Page 3</p> <p>12 of the exhibit. Summary of Opinions. Let me ask</p> <p>13 you to read to yourself the Opinion Number 1 on</p> <p>14 Page 3.</p> <p>15 A. I've read it.</p> <p>16 Q. Is there anything in that paragraph with</p> <p>17 which you disagree?</p> <p>18 A. First, I reserve the right to think</p> <p>19 about it in the whole context of everything I've</p> <p>20 written, but, I mean, they knew about the</p> <p>21 information so this seems to suggest that they</p> <p>22 didn't know about it.</p> <p>23 If they had known about it, they would</p> <p>24 have executed the plan. Well, they actually knew</p> <p>25 about it. The SEC said they knew about it, and</p>	<p style="text-align: right;">Page 139</p> <p>1 - PAUL A. MARCUS -</p> <p>2 they're -- the internal investigation said they</p> <p>3 knew about it and they didn't do it.</p> <p>4 So I'm not sure I agree with the</p> <p>5 characterization they would have done it, because</p> <p>6 they didn't do it and they knew.</p> <p>7 Now, I do agree with if they did do it,</p> <p>8 they would have cut the dividend earlier. So there</p> <p>9 are parts of it, I guess, I agree with.</p> <p>10 Q. Let me ask you to read Paragraph</p> <p>11 Number 2 on that page. It goes over the page.</p> <p>12 A. I've read it.</p> <p>13 Q. Is there anything in that paragraph with</p> <p>14 which you disagree?</p> <p>15 A. Same comment. I would reserve the right</p> <p>16 to review it in the context of all the information</p> <p>17 in his report, in my report. Looking briefly at</p> <p>18 it, as I've done just now, I'm not sure I</p> <p>19 understand what his point is about actually having</p> <p>20 adequate liquidity for 2002-2003.</p> <p>21 We knew that they had that even with all</p> <p>22 the misinformation in the marketplace. That didn't</p> <p>23 affect how they ultimately progressed through 2003,</p> <p>24 so that's not all that important.</p> <p>25 His point that the secured credit</p>
<p style="text-align: right;">Page 140</p> <p>1 - PAUL A. MARCUS -</p> <p>2 facility would have gotten done at the Northwestern</p> <p>3 Energy LLC level, I'm not sure I agree with</p> <p>4 wholeheartedly in that as long as we're in a time</p> <p>5 before the asset transfer as we discussed earlier,</p> <p>6 there are things that could have happened either</p> <p>7 from the stakeholders, security holders or the</p> <p>8 Commission that might have prevented that as well.</p> <p>9 Again, there might be some other things in here if</p> <p>10 I had some time to think about it.</p> <p>11 Q. Let me ask you to take a look at</p> <p>12 Paragraph 3 on Page 4. I'm going to try to break</p> <p>13 this down because there's the a, b, c et cetera.</p> <p>14 I would ask you, sir, if you would just</p> <p>15 first read (a) up to the end of (a).</p> <p>16 A. Okay. I've read (a).</p> <p>17 Q. My question with respect to each of</p> <p>18 these subparagraphs includes, of course, the</p> <p>19 prefatory language before (a), including that</p> <p>20 language, is there anything in (a) with which you</p> <p>21 disagree?</p> <p>22 MR. KAPLAN: Just so we're clear, to</p> <p>23 make sure, you're asking him to both give you</p> <p>24 the -- for each question to give you his views on</p> <p>25 the prefatory language and then the subparagraph.</p>	<p style="text-align: right;">Page 141</p> <p>1 - PAUL A. MARCUS -</p> <p>2 Q. Yes. I just don't want there to be any</p> <p>3 confusion that I might be asking about something</p> <p>4 that might not make sense because it can only be</p> <p>5 read in context.</p> <p>6 A. Sure. So I don't have to repeat it, my</p> <p>7 sort of general comment about really needing to</p> <p>8 take a look at information, let stand for all them.</p> <p>9 Q. It will stand for all, anything more I</p> <p>10 ask you about this report today.</p> <p>11 A. Fair enough.</p> <p>12 "(A) doesn't really define corporate</p> <p>13 stakeholders and there are certain corporate</p> <p>14 stakeholders that would have benefitted by the</p> <p>15 transfer; for instance, the equity holders of</p> <p>16 Northwestern would have benefitted by the transfer.</p> <p>17 The unsecured creditors, just off the top -- at the</p> <p>18 Northwestern Corporation level would have</p> <p>19 benefitted because there would have been more asset</p> <p>20 coverage for their unsecured position.</p> <p>21 I have to think of others, but those are</p> <p>22 a couple that would cause me to disagree with this.</p> <p>23 Q. I'm going to ask the reporter to read</p> <p>24 this back because I'm having a little difficulty.</p> <p>25 MR. PIZZURRO: Can you read back the</p>

<p style="text-align: right;">Page 154</p> <p>1 - PAUL A. MARCUS - 2 working on the case with me. We were analyzing it. 3 She was in charge of executing my requests for 4 information, and she was involved in crunching some 5 of the numbers, so to speak, and that as we found 6 out there was an accounting expert that was doing 7 that, I diverted our attention to doing the other 8 analyses that we did. And we didn't continue to 9 push for information since it was already being 10 done.</p> <p>11 Q. Did you consider that the analysis was 12 crucial to the opinion that you were rendering?</p> <p>13 A. As we talked at great lengths this 14 morning, it's not crucial to the opinion that I'm 15 rendering.</p> <p>16 It all relates to whether or not the 280 17 got funded or not, and it's a component of the 18 analysis where I used Mr. Berliner's numbers that 19 supported a position I already had; so it wasn't 20 critical. I don't agree with your 21 characterization; "crucial," I think you said.</p> <p>22 Q. Do you know how much the plaintiffs have 23 paid to have Mr. Berliner's analysis done?</p> <p>24 MR. KAPLAN: Objection.</p> <p>25 A. No idea.</p>	<p style="text-align: right;">Page 155</p> <p>1 - PAUL A. MARCUS - 2 Q. No idea? 3 A. None.</p> <p>4 MR. PIZZURRO: Let's take a five-minute 5 break. I might be done.</p> <p>6 (Whereupon, there was a brief recess in 7 the proceedings.)</p> <p>8 MR. PIZZURRO: I have no further 9 questions.</p> <p>10</p> <p>11 EXAMINATION BY MR. KALECZYC:</p> <p>12 Q. Mr. Marcus, my name is Stan Kaleczyc, 13 and I'm one of the attorneys who represents Michael 14 Hanson and Ernie Kindt in the lawsuit Northwestern 15 versus Hanson and Kindt.</p> <p>16 At the time prior to the filing of your 17 expert report, were you told that the expert report 18 was also to be used in connection with the case 19 Northwestern versus Hanson and Kindt?</p> <p>20 A. I was not, no.</p> <p>21 Q. Did you have a general understanding 22 that it would be used in that lawsuit?</p> <p>23 A. I did not, no.</p> <p>24 Q. As we sit here today, do you anticipate 25 being called as an expert witness in connection</p>
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<p style="text-align: right;">Page 156</p> <p>1 - PAUL A. MARCUS - 2 with the Northwestern versus Hanson lawsuit?</p> <p>3 MR. KAPLAN: Objection.</p> <p>4 A. I don't know what I'm going to be called 5 for past this meeting, so no.</p> <p>6 Q. Before you filed the ex -- your expert 7 report in this case, had you reviewed the Complaint 8 in the lawsuit Northwestern versus Hanson and 9 Kindt?</p> <p>10 A. I had not.</p> <p>11 Q. Do you have any general understanding of 12 the allegations in the lawsuit against 13 Messrs. Hanson and Kindt?</p> <p>14 A. I do not.</p> <p>15 Q. At any time prior to the completion of 16 your expert report, did you ever discuss the Hanson 17 and Kindt litigation with Miss Steingart or any of 18 the other lawyers from Fried, Frank?</p> <p>19 A. I don't recall doing so, no.</p> <p>20 Q. Did you ever discuss -- did you ever 21 discuss the Hanson and Kindt matter in any way with 22 any of your associates at Huron?</p> <p>23 A. Not that I recall, no.</p> <p>24 Q. In preparation of your expert report, 25 did you review the deposition of Ernie Kindt?</p>	<p style="text-align: right;">Page 157</p> <p>1 - PAUL A. MARCUS - 2 And if it would help you to refer to the 3 exhibit in your expert report, please feel free to 4 do so.</p> <p>5 A. It is not on the list, and it's not one 6 that I would have remembered; so I don't believe 7 so, no.</p> <p>8 Q. What about the deposition of Mr. Hanson? 9 A. I believe that is on the list. I will 10 confirm that for you.</p> <p>11 No. The deposition of Ernie Kindt is on 12 the list, and -- but I don't recall specifically 13 reviewing that one. I do recall reviewing the 14 Hanson deposition.</p> <p>15 Q. Would anyone else from Huron have 16 reviewed the Kindt deposition?</p> <p>17 A. Possibly, yes.</p> <p>18 Q. Do you recall anyone from Huron giving 19 you any type of summary of anything that was 20 discussed or testified to in the Kindt deposition?</p> <p>21 A. Not that I recall, no.</p> <p>22 Q. Did you receive any type of summary of 23 that, verbal or otherwise, from any of the 24 attorneys at Fried, Frank with respect to the Kindt 25 deposition?</p>
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<p style="text-align: right;">Page 162</p> <p>1 - PAUL A. MARCUS - 2 position. 3 Q. Do you know if he held any other 4 positions? 5 A. I'm sure I knew what his positions were 6 prior to writing the report. I just don't recall 7 specifically as I'm sitting here what they were. 8 Q. To the best of your recollection sitting 9 here today, your recollection is that he was the 10 CEO of Expanets? 11 A. I think that was his title, though, 12 again, it was confusing because there were 13 overlapping people and overlapping time periods and 14 overlapping titles. So I knew all of those prior 15 to the deposition. I didn't refresh my memory on 16 everyone's exact title prior to today. 17 Q. Do you recall whether Mr. Hanson had any 18 involvement with the management of subsidiary Blue 19 Dot? 20 A. I don't recall. 21 Q. Do you know whether Mr. Hanson had any 22 responsibilities with respect to the utility 23 business of Northwestern Corporation? 24 A. I don't recall that either. 25 Q. Do you have any opinion as to whether</p>	<p style="text-align: right;">Page 163</p> <p>1 - PAUL A. MARCUS - 2 Mr. Kindt had any responsibility for the failure to 3 disclose information during the year 2002 that you 4 discussed in your expert report? 5 MR. KAPLAN: Objection. 6 A. The opinions that I stated are set forth 7 in my report. I would have incorporated a whole 8 host of information in that to the extent he's 9 specifically identified in the report; that would 10 be evidence of a specific connection, but that's 11 not to say that there wouldn't be some others. But 12 I haven't put forth a separate opinion on 13 Mr. Kindt. 14 Q. Were you asked to render any opinion 15 with respect to Mr. Kindt and whether he had any 16 responsibility for the disclosures or failure to 17 disclose information in 2002? 18 A. No, I was not. 19 Q. Just so that the record is clear, 20 Mr. Marcus, to the extent that you do have an 21 opinion concerning Mr. Kindt's responsibility, it 22 would be contained in the expert report? 23 A. I would have identified -- if there's a 24 specific identification of him in the report, then 25 that would signify that there was some particular</p>
<p style="text-align: right;">Page 164</p> <p>1 - PAUL A. MARCUS - 2 piece of evidence that I was tying to the report in 3 supporting one of the positions in the report. 4 There might be some other things that didn't make 5 it to the report that might or might not support 6 that position. I don't recall them all. 7 Q. Well, is it your testimony, Mr. Marcus, 8 that just because an individual's name appears in 9 the report, that that person had responsibility for 10 the failure to disclose information that you 11 believe should have been disclosed in 2002? 12 MR. KAPLAN: Objection to the form. 13 A. I don't think that that was what I was 14 trying to say. What I suggested was that if the 15 person was identified in the report, that it was my 16 belief that that information was supporting the 17 positions and the opinions that I was making in my 18 report. That's all I said. 19 Q. I think you've told me just a moment ago 20 that there was other information that may not have 21 been -- may not have made its way into the report; 22 is that correct? 23 A. I believe I said that in an earlier part 24 of the deposition, as well. There are lots and 25 lots of pieces of information that I reviewed.</p>	<p style="text-align: right;">Page 165</p> <p>1 - PAUL A. MARCUS - 2 Q. Can you, sitting here today, think of 3 any examples of any information related to 4 Mr. Kindt that did not make its way into the 5 report? 6 A. None that I can recall, no. 7 Q. You never specifically analyzed whether 8 Mr. Kindt was responsible in any way for the 9 failure to make disclosures that you criticize in 10 your report? 11 A. That's correct. 12 Q. Let's talk for a few minutes, then, 13 about Mr. Hanson. 14 Q. Were you ever requested to render an 15 opinion as to whether Mr. Hanson specifically was 16 responsible for the failure to make any 17 disclosures? 18 A. I was not, no. 19 Can we go off the record? 20 Q. Absolutely. 21 (Whereupon, a brief discussion was held 22 off record.) 23 Q. In your expert report -- in the 24 preparation of your expert report, did you consider 25 whether Mr. Hanson had any responsibility for</p>

<p style="text-align: right;">Page 166</p> <p>- PAUL A. MARCUS -</p> <p>failure to make the disclosures that you criticize in the report?</p> <p>A. Again, only to the extent that he would have been identified as participating in something where -- which I felt was indicative of there being misleading information in the marketplace, and that would have been identified in the report.</p> <p>Q. Could you point out for me any places in your expert report where you identified Mr. Hanson as participating in something which you felt were indicative of there being misleading information?</p> <p>A. I don't believe there's any specific reference to Mr. Hanson in the report.</p> <p>Q. Although there is no specific references in the report, Mr. Marcus, did you specifically analyze whether Mr. Hanson was in any way responsible for the failure to disclose certain information during 2002?</p> <p>A. I did not, no.</p> <p>Q. You reviewed Mr. Berliner's report prior to the finalization of your expert report, correct?</p> <p>A. "Review" would be a strong word. I skimmed through it.</p> <p>Q. In skimming through Mr. Berliner's</p>	<p style="text-align: right;">Page 167</p> <p>- PAUL A. MARCUS -</p> <p>report, do you recall anything in Mr. Berliner's report that indicated that Mr. Hanson was in any way responsible for the failure to make disclosures in 2002?</p> <p>A. Again, based on my very preliminary review of it, I don't recall any, no.</p> <p>Q. And the same question with respect to Mr. Kindt in your review of the Berliner report?</p> <p>A. And my answer would be the same.</p> <p>Q. If you would turn to Pages 5 and 6 of your report, please, Mr. Marcus.</p> <p>A. Okay.</p> <p>Q. With respect to your first opinion -- and actually, it's on Page 6 in the paragraph that begins, "In each case above." It's after the bullet points.</p> <p>A. I see that, yes.</p> <p>Q. In the first sentence reads, "In each case above, material information, much of which was the focal point of analyses being performed by security analysts, rating agencies and investors, was known and withheld from the marketplace by the management of Northwestern."</p> <p>When you say "management of</p>
<p style="text-align: right;">Page 168</p> <p>- PAUL A. MARCUS -</p> <p>Northwestern," specifically to which individuals are you referring?</p> <p>A. In this case, it's a general characterization. I did not analyze each individual manager's contribution to the information that was not in the marketplace.</p> <p>Q. Did you analyze the contribution of any of the individual managers of Northwestern?</p> <p>A. Analyzing individual contributions would be too strong of a statement. I did review declarations made by different managers. I reviewed the Cease and Desist Order from the SEC and their accusations regarding management.</p> <p>So I generally reviewed those things and there were different pieces of information I relied on. But I did not undertake a separate analysis of each individual manager's contribution to those misrepresentations.</p> <p>Q. Well, would it be fair to say, then, that you have no opinion as to any specific manager at Northwestern as to whether that person has any responsibility for the failure to make disclosures?</p> <p>A. It's fair to say that I haven't analyzed that.</p>	<p style="text-align: right;">Page 169</p> <p>- PAUL A. MARCUS -</p> <p>Q. Well, do you have an opinion as to whether Mr. Hylland, for example, bears any responsibility for the failure to make disclosures?</p> <p>A. Again, my assignment was to assess -- analyze the impact of the disclosures not being made, not necessarily who was responsible for the disclosures not being made, if that's answering your question.</p> <p>Q. So you have no opinion as to any individual's responsibility for failure to make disclosures?</p> <p>MR. KAPLAN: Objection. Asked and answered.</p> <p>A. I guess what I'm saying is that I have not analyzed any specific individual's contribution to those misrepresentations or omissions.</p> <p>Q. So I think you already testified that you have no opinion as to Mr. Hylland.</p> <p>How about with respect to Mr. Lewis?</p> <p>MR. KAPLAN: Objection. Asked and answered.</p> <p>A. It's the same answer. I don't have -- I have not specifically analyzed any individual person's contribution to the misrepresentations or</p>

<p style="text-align: right;">Page 174</p> <p>1 - PAUL A. MARCUS - 2 which would have had an effect on how the company 3 would have been able to issue debt and how the 4 company Northwestern was viewed by the debt 5 holders. So I used that information in coming up 6 with my opinions to help assess those particular 7 characteristics within the debt markets.</p> <p>Q. The rating agencies would have relied upon publicly available information that -- at the particular time they made their comments?</p> <p>MR. KAPLAN: Objection to the form.</p> <p>A. I don't know that to be a fact or not. They could be given information that I don't know about that isn't public, so --</p> <p>Q. Have you ever been employed by a rating agency?</p> <p>A. I have not, no.</p> <p>Q. In your career, you've worked with rating agencies in various capacities and in your work representing lenders, for example?</p> <p>A. I've had to analyze the reports of credit rating agencies numerous times, yes.</p> <p>Q. In that context, have you ever known rating agencies to be relying upon information that was not part of the public domain?</p>	<p style="text-align: right;">Page 175</p> <p>1 - PAUL A. MARCUS - 2 A. It's a bit of a chicken and the egg. 3 Once they put out a report, then the information is 4 in the public domain. I don't know if they had 5 inside conversations with management prior to 6 issuing their report that might have been private; 7 I just can't answer that.</p> <p>Q. Earlier, Mr. Marcus, I had asked you about the definition of who was management, specifically with respect to your opinion on Page 6 of your report. There are other places in the report where you also refer to company management. Would your answer be the same in each of those cases, that it's a general statement rather than a specific reference to individuals?</p> <p>A. That's correct; it would.</p> <p>Q. In the preparation of your expert report, did you ever review the public disclosure documents issued by the Montana Power Company at the time that it sold the QUIPS to the public in 1996?</p> <p>A. I did not, no.</p> <p>Q. I believe you did testify earlier that you did review the indenture and amendments to the indenture associated with the QUIPS?</p>
<p style="text-align: right;">Page 176</p> <p>1 - PAUL A. MARCUS - 2 A. I believe I testified that I read it quickly. I reviewed would probably be stronger than I actually -- than I did.</p> <p>Q. If you would turn to Page 7 of your report, Mr. Marcus, in your opinion that's II. You state, "Had the assets of Northwestern Energy LLC not been transferred to Northwestern, the QUIPS' investors would have been covered by the former's assets and not junior to the debt and other liabilities of Northwestern Corp."</p> <p>What do you mean by "covered by the former's assets"?</p> <p>A. I refer you to later in my report where I describe it, but generally it's the structural subordination that we were talking about. So if Northwestern LLC is a separate entity, and looking at the assets and the liabilities of that entity there was positive net worth, as I described later in the report, whereas when they went to -- when those assets were transferred to Northwestern that flipped and by the end of 2002 there was no coverage for the securities that were at the bottom of the pile which, in this case, were the QUIPS.</p>	<p style="text-align: right;">Page 177</p> <p>1 - PAUL A. MARCUS - 2 Q. So might it be fair to say when you used the phrase "covered by the former's assets," you mean that sometime in 2002 prior to November 15th, 2002, the assets of Northwestern Energy were greater than the liabilities of Northwestern Energy LLC? Excuse me.</p> <p>A. I believe the calculation that I employed in my report was to look at the tangible assets of Northwestern LLC at the last point in time where separate financial statements were prepared and subtract from that the total liabilities of the company, making the assumption that all the other liabilities in the company were senior to the QUIPS.</p> <p>And I know that might or might not be correct but I took the most conservative position I could and said that even with that, there was an excess of asset coverage of, I believe it was \$250 million, if that answers your question.</p> <p>Q. I think there was nothing in your answer to suggest that the QUIPS in any way were secured by the assets of Northwestern Energy LLC, correct?</p> <p>A. If you -- are you using "secured" in a legal --</p>

<p style="text-align: right;">Page 190</p> <p>1 - PAUL A. MARCUS -</p> <p>2 A. Again, to the extent that I reviewed 3 other documents relating to the Commission's 4 attitude and feelings towards this company, they 5 would have been included in my thinking when I came 6 up with my opinions. I don't think they're 7 referenced in the report, but they would have 8 been -- they would have been something that would 9 have given me a certain impression of what the 10 company relationship with the Commission was and 11 how the Commission might respond in a situation 12 where all of a sudden the financial prospects of 13 the company change dramatically.</p> <p>14 Q. Why would you not have referenced those 15 in your report?</p> <p>16 A. I'm not saying it's not referenced in 17 the document list. What I'm suggesting is there 18 was one particular quote which I used in my report 19 which you're calling a reference. I'm telling you 20 the collective report describes what my belief is 21 from my review of all this information.</p> <p>22 Q. So that it's clear to me, Mr. Marcus, 23 are all the documents you reviewed listed in 24 Exhibit 1 to your report?</p> <p>25 MR. KAPLAN: Objection to the form.</p>	<p style="text-align: right;">Page 191</p> <p>1 - PAUL A. MARCUS -</p> <p>2 A. It's always my sincere hope that all of 3 them do make it to this list. There could be an 4 exception, and I just don't know.</p> <p>5 Q. So other than as a result of perhaps 6 inadvertence, everything you looked at is 7 referenced in Exhibit 1?</p> <p>8 A. That's my sincere desire to make that 9 happen.</p> <p>10 Q. Just so that the record is clear, you 11 have no understanding as to what the allegations 12 against Messrs. Hanson and Kindt are that are made 13 in the Complaint by Magten against them?</p> <p>14 MR. KAPLAN: Objection. Asked and 15 answered.</p> <p>16 A. That's correct.</p> <p>17 MR. KALECZYC: Let's take a few minute 18 break. 19 (Whereupon, there was a brief recess in 20 the proceedings.)</p> <p>21 Q. Mr. Marcus, would you turn to Page 7 of 22 your report, again, please.</p> <p>23 A. Okay.</p> <p>24 Q. In III, the third opinion, the 25 assumption is that Clark Fork remained liable for</p>
<p style="text-align: right;">Page 192</p> <p>1 - PAUL A. MARCUS -</p> <p>2 the QUIPS obligations.</p> <p>3 Is that your assumption, or did someone 4 direct you to make that assumption?</p> <p>5 MR. KAPLAN: Objection to the form.</p> <p>6 A. That was an assumption I was asked to 7 make.</p> <p>8 Q. Who asked you to make that assumption?</p> <p>9 A. That assumption would have been asked by 10 counsel. I was asked to make that assumption by 11 counsel.</p> <p>12 Q. Independent of the assumption that 13 counsel asked you to make, do you have any opinion 14 as to whether Clark Fork remained liable for the 15 QUIPS obligations?</p> <p>16 MR. KAPLAN: Objection.</p> <p>17 A. As a matter of a legal conclusion, I 18 don't.</p> <p>19 Q. Any opinion?</p> <p>20 MR. KAPLAN: Objection. Calls for a 21 legal conclusion. Goes to the underlying issue in 22 the litigation.</p> <p>23 A. I guess I can only tell you what I have, 24 and I've made this assumption based on what I was 25 asked to do by counsel.</p>	<p style="text-align: right;">Page 193</p> <p>1 - PAUL A. MARCUS -</p> <p>2 Q. You have no opinion independent of that 3 assumption?</p> <p>4 MR. KAPLAN: Objection. Asked and 5 answered. Calls for a legal conclusion.</p> <p>6 A. I think I said the last time before the 7 objection, that would be a legal conclusion and I 8 did not make that opinion.</p> <p>9 Q. In your expert opinion in this case, you 10 on several occasions give -- speculate as to what 11 the Montana Public Service Commission may have done 12 had certain information in your view been known to 13 it.</p> <p>14 Have you ever been called upon in an 15 expert report in another matter to speculate on 16 what a public utility commission or public service 17 commission from a state might do?</p> <p>18 MR. KAPLAN: Objection to the opening 19 speech, as well as to the characterization of the 20 testimony.</p> <p>21 A. I disagree with your calling my 22 testimony speculative. And the speculation that I 23 used, number one.</p> <p>24 Number two, I have been involved in 25 analyzing the Commission's responses to all kinds</p>